

MT LEGISLATIVE HISTORY

Chapter 283 1959

Bill H. 123 S. _____

Original bill & hist. C

H. Committee on Banking & Insurance

S. Committee on Banks & Banking

Hearing Date(s) Feb 05 ☒ C

Hearing Date(s) Feb 23 ☒ C

Feb 06 ☒ C

Feb 24 ☒ C

Feb 13 ☒ C

Feb 25 ☒ C

_____ ☐ C

Feb 26 ☒ C

Date Out Feb 13 ☒ C

Feb 26 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

BANKING AND INSURANCE COMMITTEE
(Public Hearing)

February 5, 1959

The Banking and Insurance Committee of the House held a public hearing on adjournment in Senate Room 402. The following members were present: Chairman Regan, Schwinden, Sheehy, Curry, Holecsek, Moudree, Page, Raundal, Corcoran, Fjare, Kiff, Nichols and Paulsen. Speaker McDonald and Majority Floor Leader Cerovski sat in on the meeting.

Chairman Regan allowed proponents and opponents one-half hour on each side for discussion and fifteen minutes for rebuttal. Representative Elting appeared before the Committee and explained House Bills Nos. 313 and 132.

After discussion (since HB 123 and HB 132 were very similar) Schwinden moved that House Bill No. 132 do not pass. Motion seconded by Curry and carried.

HB No. 313: Proponents

Representative Elting explained this bill to the committee. "Section 3 - We stuck to the idea of loan commissioner being in charge of this act." Section 5 - (b) and (c) are good safeguards. Section 6 - application fee only \$50.00, yearly license fee \$125.00. Section 10 - very similar to most small loan bills. This entire bill most concise small loan bill that I have ever seen. Section 13. - We have what we consider a concise and satisfactory insurance arrangement. This prevents any possibility of making a racket on insurance on a person borrowing money on something he may own. Section 15 - very concise, safe guard. Section 16 - same and section 17. Section 19 - very concise. Section 25 - amendment to section 47-125 of the Revised Codes of Montana. With our additions to that section you will find you are going a great way in preventing usury which has been main charge."

Alfred F. Dougherty, Attorney: (Montana State Council No. 9)

"I have examined on behalf of the Union all three bills. Some of you who were here in the last session of the Legislature know I was vitally interested two years ago. The council urges this committee and wishes some small loan legislation enacted by this session of Legislature because there are some abuses in the small lending field. Montana should see need is supplied in retes and protection for the borrowers that meet the thirty-three states that have small loan laws. It is my conviction that HB #313 represents a better piece of legislation than HB #123. HB #313 very largely is a duplication of the Consumer Finance Act which is in existence in Kansas. On behalf of my clients I urge you to give favorable consideration to this bill."

HB #123:

WESLEY W. WERTZ, ATTORNEY, HELENA. (representing people now engaged in the small loan business in Montana:)

Karl Deschler	Butte
Pete Bracco	"
Joe Irwin	Great Falls
I. M. Nyquist	"
Ken Feurt	"
Loyal Johnson	Anaconda
Wm. McKinley	"
A. L. Armstrong	Missoula
Ray Hassman	"
C. W. Gettman	Billings
James Staughy	"
Harold Bell	"
Richard Beckerly	"
Barney Johnson	Butte
James Hope	"
Frank Duffy	Great Falls
Bert Brietenbucher	Havre
Larry Beatwina	Great Falls
Don Nyquist	Glasgow
Mark Sternhagen	"
Art Murphy	Great Falls
Don Olin	Helena
D. Gilliland	Anaconda
L. C. McDonald	Helena
Art Lindblad	Anaconda
Earl Dawes	Bozeman
Don Anderson	Missoula
Robert Thennis	Anaconda

"I can not see any reason for HB #123 but can see plenty of reason for HB 313. I submit when small loan people of Montana have studied these problems for years, they are in a good position to submit good legislation".

William Taylor, Attorney from Billings.

"I think this bill takes care of any problems that we have in the state at this time."

Dave Bryan, Managing Director of Unions, Great Falls.

"The Board of Directors of credit union have on many occasions stated that supervision of small loan industry in Montana would be very beneficial to the general public. I feel HB 123 is a little the better of the two bills."

Leo C. Graybill, Attorney from Great Falls.

"I want to emphasize this bill 123 is built for the protection of the borrower and our main concern need not be with the lenders. I want to call your attention to certain items that do protect the borrower. Section 33(g).

REBUTTAL

Elting - "My supporters seem to be in favor of my bill. HB 123 is almost word for word identical with HB 132 which you just killed."

Willard Frazer, Billings, representing A. W. Fletcher of Billings (who can't be here)

"I have been opposing these loan bills since about 1935 and I don't want to make a turn about in my opposition. Mr. Fletcher will go along with HB 123 if we must have a bill although we feel it is wrong with HB 123.

Wesley W. Wertz - "We have come up with the best possible bill we can submit for the State of Montana. We want this bill to go through and feel confident HB 123 will do it".

Carl Deschler, Butte, Montana.

Leo C. Graybill.

R. M. Nyquist.

No further discussion it was moved and seconded to adjourn.


Regan, Chairman

BANKING AND INSURANCE

February 6, 1959

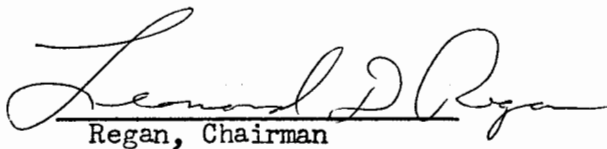
The Committee on Banking and Insurance met on recess with the following members present: Regan, Schwinden, Sheehy, Curry, Holecek, Jardine, Raundal, Rindy, Corcoran, Fjare, Kiff, Nichols and Paulsen. Majority Floor Leader Cerovski sat in on the meeting.

HB #89 - Mr. Curry discussed this bill for the sub-committee. After discussion, Curry moved this bill do pass, as amended. (see committee report for amendments). Motion seconded by Raundal and carried. As a substitute motion Schwinden moved that HB #89 be reported out of committee without recommendation. Motion seconded by Rindy and carried. (5 in favor of without recommendation - Jardine, Holecek, Raundal, Rindy, Schwinden).

HB #360 - Schwinden moved that this bill be amended by striking Section 3 in its entirety and as so amended do pass. Raundal seconded motion which carried.

HB #361 - 369, incl. - After committee discussion, Nichols moved these bills be held up until next meeting in order to have Mr. Towle appear and discuss them more fully with the committee. Curry seconded motion which carried. Cerovski moved HB 123 and 313 be put in committee of three and take parts out of both bills and make one bill. Chairman Regan appointed Sheehy, Chairman, Raundal and Kiff to the sub-committee.

No further discussion the meeting adjourned.


Regan, Chairman

BANKING AND INSURANCE

February 13, 1959

The Committee on Banking and Insurance met on recess with the following members present: Regan, Schwinden, Curry, Jardine, Moudree, Page, Raundal, Rindy, Corcoran and Kiff. Majority Floor Leader Cerovski sat in on the meeting.

HB # 313 and 123 - made into a substitute bill. Appearing before the Committee and discussing these bills were: Wesley W. Wertz, Raymond Peak, Billings, Herb Nyquist, Great Falls and Carl Deschler, Butte. After Committee discussion on Substitute House Bill No. 123, Schwinden moved the proposed amendments (see attachment to HB Sub. 123) be accepted. Motion seconded by Rindy and carried.

Schwinden moved HB #313 do not pass. Motion seconded by Jardine and carried.

HB #123 - Schwinden moved that this bill do not pass but that substitute HB #123, as amended, do pass. Motion seconded by Jardine and carried.

HB #444 - Jardine moved this bill do not pass. Motion seconded by Schwinden and carried.

It was moved and seconded to adjourn.


Regan, Chairman

Substitute House Bill 123:

Page 3, line 1, after the word "remove" add the word "and" —

~~Page 5, line 1, insert~~

Strike
Page 6, line 12, "licensee may not move his place of business within a county without payment of a new license"

Line 14, after the word "license" comma, strike out everything and insert the following: "provided he obtains written permission from the Commissioner".

Page 7, line 8, after the word "business" it will read as follows: "on December 31, 1958" and delete words "during twelve (12) months or more immediately preceding the date of this act"

Section 14, page 13, strike (b) and re-letter (c) as (b) and ^d (c) as ^e (d)

Page 12, line 18, insert after the words "ledger" or "card"

SENATE COMMITTEE ON

BANKS AND BANKING

The Senate Committee on Banks and Banking met in Room 404 Monday, February 23, 1959 at 12:40 P. M. The following committee members were present: Chairman Lehrkind, Groff, McKenna (Judith Basin) Bovey, McDonnell and Smith. There being a quorum present, Chairman Lehrkind called the meeting to order.

Substitute House Bill No. 123 was reviewed briefly by the Chairman. There were several proponents and opponents present, also two members of the House of Representatives who wished to give their viewpoints on this bill.

Representative Gunderson was introduced and stated he realized the need in Montana for regulation of small loan companies. He felt the small loan companies can get along nicely with provisions in this bill.

Representative Cerovski was introduced and reviewed the actions the House took on three house bills. They were considered at length and then broken down and Substitute House Bill No. 123 resulted (comprised of all three House bills) The Committee Report in the House came out with unanimous vote for the Substitute House Bill 123. The Bill is good. He felt Montana is long over due for such a bill. He feels loan companies do charge large interest.

Wesley W. Wirtz, Attorney at Helena, representing 28 people engaged in small business was introduced and gave the following viewpoints on SHB No. 123. Realizes something had to be done soon. This bill passed Feneral File and Third Reading in the House with the understanding that the bill would be amended in the Senate, approved by the House. Lending money in small amounts is a recent practice. More like service that must be paid for. Mr. Wirts gave to the Committee Proposed Amendments to Substitute H. B. 123 and reviwed each amendment in detail with the Printed Bill in the possession of the Committee. He felt that this bill would be good legislation if amended as submitted.

Leo Greybill appeared next. He is from Great Falls and has many clients interested in this bill. He stated he talked with Senator Bovey and other people before legislature convened regarding this type of legislation. This legislation has been sought for a long time. and is needed for protection of borrower.

Judge Taylor was introduced and stated he represented the same people as Mr. Wirtz and Mr. Greybill. Believe bill as now before the Committee would serve purpose and protection to the public. He hoped the Committee would see fit to make amendments and pass same.

Mr. Fred Heneke, Representing the Montana Bankers Association from Helena was introduced. He stated this bill was good if the promise that the banks are eliminated from provisions of the act, particularly Provision No. 28, the Penalty Clause.

Mr. Williard Frazier from Billings spoke opposing the bill. He stated

Page two.

he has been appearing on this type of legislation since 1935 and feels it has wasted so much time of the busy Legislators. He felt the regulations on this bill were completely out of order. He feels it is not needed. Competition takes care of prices. He stated a similar bill had passed the House and Senate two other times and both times were vetoed by Governors. He left "Two Governors Can't Be Wrong" which is the letters transmitted to the Legislature along with the vetoes. These messages are attached. He stated he hoped this bill was killed.

Mr. Fletcher from Billings was introduced. He rose in opposition of SHB 123 also. He followed the same viewpoints as Mr. Frazier.

Chairman Lehrkind asked if there were any others present wishing to speak in opposition to this bill. There were none and Mr. Wirtz requested to give a short rebuttal. He was granted his request and a short discussion followed. Mr. Wirtz left several copies of "Comments on House Bill No. 123" with the Committee members. Copy attached.

After a further discussion, the guests were excused. Chairman Lehrkind stated the Committee had SHB 123 before them and what was their pleasure?

Senator McDonnell stated he thought the bill was poor. There are no limitations. Under this bill individuals could not loan money.

Senator Groff stated Montana needs small loan bill awful bad.

Chairman Lehrkind asked if the committee felt there was any way to amend this bill so it would be good legislation.

Senator McDonnell stated he did not think so.

Senator Groff stated he wanted to get something on the books so you can get to amending it.

Senator McDonnell stated it was objectionable in his opinion.

A discussion followed.

Senator McDonnell moved that Substitute House Bill No. 123 be not concurred in. Senator Smith seconded. Carried.

The meeting of Banks and Banking Committee of the Senate adjourned at 1:40 P. M.

Chairman

COMMENTS ON HOUSE BILL NO. 123

The maximum rate of interest as set up in state statutes years ago generally contemplated the lending of a significant sum of money for a definite period at the expiration of which the sum of money was returned together with interest or, possibly, interest was paid periodically during the term of the loan. For example, a borrower would obtain a \$1,000.00 at 10% for a year and at the end of the year he would pay back the \$1,000.00 plus \$100.00 interest or he may have paid the interest quarterly at the rate of \$25.00 per quarter. The whole transaction involved one note and one payment unless the interest was to be paid periodically. Charges were "for the use of money", for the service rendered and expense involved were negligible. Also, the borrower was generally a person known to the lender or about whom he could find out readily. In most cases there was ample security given by the borrower.

Lending money in small amounts is a fairly recent development. It is more like a service that must be paid for than the use of money. The Bureau of Business Research of Western Reserve University concludes that consumer credit charges are not excessive under the following conditions:

"1--Interest rates need to be adequate to cover all costs and to allow lenders a reasonable profit.

"2--The rates allowed the type of lender who makes the smallest and most risky loans must be high enough to make such lenders willing to extend loans of various sizes to all persons who can qualify as adequate credit risks."

In Montana the highest rate of interest that can legally be charged is 10% per annum. All lenders of money in small amounts in Montana at the present time make charges which are more than that. Their positions are legally justified on the basis of language of a decision of the Montana Supreme Court in the case of Bowden v. Gabel, 105 Mont. 447, 485, that

". . . a lender may properly exact from a borrower, in addition to interest at the highest lawful rate upon the money lent, reasonable fees or compensation for services rendered, or reimbursement of expenses incurred, in good faith, by the lender or his agent, in connection with the loan, without thereby rendering the transactions usurious, even though the services rendered or acts done be such as would ordinarily be performed by the lender in his own interest."

The difficulty in doing business under the indefinite rule stated is that some small lenders make excessive charges. There is no "yardstick" to measure the "reasonable fees or compensation for services rendered" that may be charged "in addition to interest at the highest lawful rate."

The rates provided in House Bill No. 123 are comparable to those charged in other so-called "regulated" states. However, the smallest loans carry the greatest proportionate charges which is required if any really small loans are to be made. In other words, each loan must pay its own way or else it won't be made.

The cost of making an installment type loan and collecting it are approximately the same whether the amount of money involved is \$30.00 or \$300.00. The official reports of several so-called regulated states in years past included a computation of "cost per small loan account per month." These varied from \$2.48 in Virginia in 1949 to \$5.03 in Nevada in that year. Certainly such costs have not decreased in the years since 1949. In Minnesota a record was kept of the cost of small loan accounts per month and it showed that the cost increased from \$3.27 to \$4.24 between 1949 and 1954. This is some indication of the reasons why small loans must require what appear to be high charges in order that any small loans be made at all.

With respect to the charges properly to be made under any small loan legislation, they must be justified on the basis of paying the cost of doing business. This is the reason that the rate of charge must be greater with respect to small sums than it must be with respect to large amounts of money. This is the reason for the "sliding scale" of charges included in Sec. 33 of House Bill No. 123.

The other features of House Bill No. 123 relate to the manner of small loan people doing business under a license granted by a small loan board. Most of the regulatory features are self-explanatory and are in accordance with good practices that will protect a borrower from an unscrupulous lender or a lender who is unwilling to disclose completely the nature of a loan transaction. The reason for a small loan board rather than regulation by only one public official is that the small lenders of Montana should have some voice in regulating the business in which they are engaged; particularly in view of the fact that additional licenses are issued on the basis of "convenience and advantage." It is necessary that someone directly acquainted with the business shall have some voice in determining "convenience and advantage" as provided in Sec. 10 of the bill. It has been found, in other states, that where one public official had the sole determination of issuing additional licenses that more of the chain loan companies were able to get licenses, where local people were not. This is not to be critical of any particular public officials, past, present or future, but experience has disclosed that various means have been used to influence the issuing of licenses to the large chain loan companies.

Twenty-three of the so-called regulated states now have a convenience and advantage licensing clause in their so-called small loan laws. Ten states having the convenience and advantage clause have adopted it within the past ten years. The reason for such a clause is that too many loan offices results in excessive competition with the further result that small offices cannot build a sufficient volume to make a legitimate profit and, therefore, must resort to unethical practices. Limiting the number of places that lend money is not without precedent. It is well known that a bank cannot be established in any community without first having been found to be necessary by either the State Superintendent of Banks in the case of state banks, or the Comptroller of the Currency in the case of national banks.

Montana small lenders who are behind House Bill No. 123 believe that a small loan board, the public convenience and advantage clause and the rates provided are the real meat of House Bill No. 123. However, the rest of the provisions are also very important because they regulate a business that if it is handled improperly can abuse those who need small sums of money and are unable to get credit in other lending institutions, such as banks.

PROPOSED AMENDMENTS TO SUBSTITUTE H. B. 123

At line 13 of Section 4 (at page 3) of the printed bill, delete the words and figures "Section 5 to 24, inclusive," including the commas. (The excepted businesses should be completely excepted and not made subject to portions of an act not related to them at all.)

At line 17 of Section 4 (at page 3) of the printed bill, delete subsection (c) at lines 17 through 20 as this penalty provision more properly belongs under the penalty section (Section 28) where a similar provision is to be included under these proposed amendments.

At line 3 of Section 6 (at page 4) of the printed bill, delete the comma and the words "a nontransferable and nonassignable license" and substitute for said words deleted the following: "a license which shall not be transferable or assignable except in connection with a sale of the business and then only to a person approved by the commissioner." (The licensee should be able to sell his business and not be compelled to liquidate if he no longer wishes to operate the business.)

At line 2 of Section 7 (at page 4) of the printed bill, check to see if the word "with" is "within" in the engrossed bill. (Possible typographical error.)

At line 3 of Section 7 (at page 4) of the printed bill, after the words "the commissioner" insert the following: "in his discretion exercised for the protection of borrowers and for the prevention of monopolies in the consumer type loan business."

At line 10 of Section 12 (at page 7) of the printed bill, delete the words "rate or". (The thing that is important is the "amount of charges." The words "rate or" make this ambiguous.)

At lines 17 and 18 of Section 12 (at page 7) of the printed bill, delete the comma and the words "and in case the charges have been added to the principal of the loan that such charges are subject" and substitute in lieu thereof the word "pursuant." (Since Section 10 (a) says "the charges shall be added to the principal of the loan" - lines 11 and 12 of Section 10 - the words proposed to be deleted are an ambiguity.)

At line 3 of Section 14 (at page 8) of the printed bill, delete all of the remainder of Section 14 beginning with "(a)" and substitute in lieu thereof the following:

"When the principal amount of the loan exceeds two hundred dollars (\$200.00) exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure tangible personal property offered as security against any substantial risk of loss, damage or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

"It shall also be optional with the borrower whether there shall be obtained as security for a loan made under this act reasonable insurance on the life and/or earning capacity of the borrower, or one of them if there are two or more borrowers, in any amount not to exceed the approximate amount of the indebtedness at any time, or, where periodic benefits are provided, such periodic benefit shall not exceed an amount equal to a scheduled installment on a loan.

"The premium for such insurance shall not exceed that fixed by the current applicable manual of a recognized standard insurance rating bureau. A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been cancelled and the unearned portion of the premium for the cancelled insurance has been rebated to the borrower.

"Notwithstanding any other provision of this act, any gain or advantage in the form of commission or otherwise, to the licensee or to any employee, affiliate or associate of the licensee from such insurance or its sale shall not be deemed to be an additional or further charge in connection with the contract of loan.

"Insurance permitted under the provisions of this section shall be obtained through a duly licensed insurance agent, agency or broker. Insurance written, as permitted by this section, must insure the borrower's interest as well as that of the licensee." (The present

insurance provisions are not sufficient or satisfactory from the point of view of either the lender or the borrower. The lender should be able to require property insurance in cases of larger loans and the borrower should be able to get credit life and health insurance at his option but the borrower should not be exposed to all the insurance an unscrupulous lender cares to load upon him and the extra charges therefor which the present provision would allow.)

At line 11 of Section 19 (at page 10) of the printed bill, check the word "owing." (Possible typographical error.)

At line 1 of Section 28 (at page 16) of the printed bill, delete

all of the remainder of said Section 28 after the word "Penalties" and substitute in lieu thereof the following:

"Any person and the several members, officers, directors, agents and employees thereof, who shall violate or participate in the violation of any provision of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) and not less than one hundred dollars (\$100.00) or by imprisonment of not more than six (6) months or by both such fine and such imprisonment in the discretion of the court. Any contract of loan in the making or collection of which any act shall have been done in violation of this act shall be void and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever."

(This places the penalties under this act in one section and makes it briefer and clearer, particularly with respect to the practices forbidden by this act.)

TWO GOVERNORS CAN'T BE WRONG

It is nothing new for these 'SYNDICATED LOAN SHARKS' to be trying to force the Montana Legislature to Legalize 36% plus Interest. Bills similar to Substitute H. B. 123 have been defeated by Legislature after Legislature, since 1935. Twice, these Syndicated Loan Sharks did manage to get their 36% type Bills through the Legislature, only to meet with a vigorous denunciation and veto--once by Republican Governor Sam C. Ford, and once by Democrat Governor Roy Ayers. Below are their respective veto messages in full:

ROY E. AYERS
Governor

State of Montana
OFFICE OF THE GOVERNOR
Helena
March 17, 1939

(COPY)

Honorable Sam W. Mitchell,
Secretary of State,
Helena, Montana

Dear Sir:

I herewith transmit to you Senate Bill No. 207, without my approval and with my objections thereto.

This Bill is entitled, "AN ACT RELATING TO SALARY AND OTHER SMALL INSTALLMENT LOANS, PROVIDING FOR SUPERVISION THEREOF BY THE STATE BANKING DEPARTMENT, FIXING MAXIMUM RATE OF INTEREST THEREON, PROVIDING FOR PENALTIES FOR VIOLATION OF THE PROVISIONS OF THIS ACT, AND REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT HERewith."

This Bill has become commonly known as the "Loan Shark Bill" and if approved would legalize a charge of interest on loans up to \$300.00 at a rate of three percent per month, which would amount to thirty-six percent per year and if compounded it would be greatly increased; and since there is no prohibition on compound interest in the Bill, that undoubtedly would be one of the vices that would follow. Under present laws any rate of interest over ten percent per year becomes usurious and I cannot understand just why I should be a party to more than trebling the rate of interest now legal under the usury law on the little fellow who has to make loans of \$300.00 or less.

To me it just seems that this Bill would be a disgrace to the statute books, and I hereby disapprove and veto the said Senate Bill No. 207.

Yours very truly,

/s/ ROY E. AYERS

Governor

March 21, 1947

(COPY)

Honorable Sam W. Mitchell
Secretary of State,
Helena, Montana

Transmitted herewith is Senate Bill No. 51, entitled:

"An Act to define and regulate the business of lending in amounts of Three Hundred Dollars (\$300.00) or less; to authorize the licensing of persons engaged in such business; to permit such licensees to make charges at a greater rate than lenders not licensed hereunder; to prescribe maximum

rates of charge which licensees are permitted to make; to regulate assignments of wages or salaries, earned or to be earned, when given as security for a loan of or as consideration for a payment of Three Hundred Dollars (\$300.00) or less; to provide for the administration and enforcement of this Act by the State Examiner as Ex-officio Superintendent of Banks; to provide for the issuance of regulations and orders therefor: to authorize the making of examinations and investigations and the publication of reports thereof; to provide for a review of administrative acts hereunder; to provide that State Examiner may employ a deputy and other employees necessary for administration of this Act; to provide disposition of license and investigation fees; to prescribe penalties; and to repeal all Acts or parts of Acts whether general, special or local, which relate to the same subject matter as this Act, so far as they are inconsistent with the provisions of this Act."

without my approval and with objections thereto.

This measure provides for the regulation of the business of lending in amounts of \$300.00 or less at the interest rate of 3 per cent per month.

The interest rate provided is exorbitant and cannot be justified.

Small loans are being solicited by every bank in the State at the legal rate of interest fixed by statute; namely, 10 per cent per annum.

Most banks loan these small sums without security or endorsers, and those that are secured, the borrower pledges the same kind of security he would under Senate Bill No. 51; that is, cars, household furniture, insurance policies, etc.

From a rather exhaustive investigation made by me, I am convinced that in those States having laws similar to Senate Bill No. 51, borrowers of sums ranging from \$5.00 to \$50.00 are not being adequately served. This has had a tendency to build up bootlegging of small loans with interest rates far in excess of 3 per cent per month.

There is great need in this State for small loans of from \$5.00 to \$50.00, but I am convinced the borrower of such small amounts would not be adequately served should this bill become a law.

Under Senate Bill No. 51, the small loan agencies now operating in the State would be forced out of business, and the field left open to the large concerns, whose principal interest would be the loaning of sums from \$100.00 to \$300.00 at 3 per cent per month--a most lucrative business--but the small borrower would find few lenders to serve his needs.

If the small loan business is to be regulated, adequate provisions must be made for examination and close supervision. Otherwise, a condition might develop which would defeat the provisions of the law.

The fees authorized under this bill would not provide sufficient funds to properly examine and supervise those operating under it, thus tending toward infraction and confusion.

For these reasons, I must withhold my approval of the bill.

/s/ SAM C. FORD

GOVERNOR

Substitute H. B. 123 is definitely not in the best interests of Montana and should be resoundingly defeated.

WILLARD E. FRASER

February 24, 1959

Senator Groff asked if anyone had contacted the Bank Examiner.

Mr. Pitts answered Yes and he is agreeable with House Bill No. 89.

Mr. Bill Fredricks, Secretary of the Montana Automobile Dealers Association was introduced. He stated that this bill had been gone over twice with the Bank Examiner and he asked to have a special fund of the fees to be set aside in his own fund. The Bank Examiner is concerned with business being regulated. He feels it is very good legislation.

Mr. Fred Heineke, President of the First National Bank & Trust Company in Helena was introduced and was very much in favor of this Bill. He feels the schedule of rates is lower and it is very good legislation. He asked if there were any questions.

Senator Groff asked who gives the licenses. It was answered that the Superintendent of Banks does as set out in the bill, Page 5, Section 6 at the bottom of the page.

Chairman Lehrkind asked if there were any other questions. The visitors were excused.

Representative Cerovski was present and gave his views on this Bill. He stated he would like to have a skeleton on the law books at least. He hoped the Senate Committee would concur in this bill.

Chairman Lehrkind asked the pleasure of the Committee on House Bill No. 89.

Senator Smith moved that House Bill No. 89 be concurred in. Senator Groff seconded the motion. Carried. Senator McDonnell voted no, but does not wish to have a minority report.

Senator Bovey moved that the Senate Committee on Banks and Banking reconsider the action taken on Substitute House Bill No. 123. Senator Groff seconded the motion. A Roll Call vote was taken with the following results: Chairman Lehrkind - No. Morrow - Yes. Groff - Yes. McKenna Yes. Bovey - Yes. McDonnell - No. Smith - Yes. Motion carried.

Chairman Lehrkind appointed a Sub-Committee to act on ^{Substitute} House Bill No. 89. Senator Bovey as Chairman and Senator Morrow and Senator Groff to meet with the Chairman of the Sub-Committee and draw up amendments as they desired.

Senator Groff moved the meeting be adjourned. Seconded by Senator Smith. Carried. The Senate Committee on Banks and Banking meeting adjourned at 1:30 P. M.

Chairman

February 25, 1959

Senator Morrow moved that House Bill No. 368 be concurred in. Seconded by Senator McDonnell. Carried.

Senator McDonnell moved that House Bill No. 369 be concurred in. Seconded by Senator Groff. Carried.

Senator McDonnell moved that House Bill No. 372 be concurred in. Seconded by Senator Groff. Carried.

The Chairman stated there would be another Committee Meeting February 26th at 12:30 P. M. to discuss Substitute House Bill No. 123.

Senator McDonnell moved the meeting adjourn. Seconded by Senator Groff. Carried.

The Senate Committee on Banks and Banking adjourned at 1:45 P. M.

Chairman

SENATE COMMITTEE ON
BANKS AND BANKING

The Senate Committee on Banks and Banking met in Room 404, Thursday, February 26, 1959 at 1:45 P. M. The following committee members were present: Chairman Lehrkind, Morrow, Groff, McKenna, Bovey and McDonnell. There being a quorum present, Chairman Lehrkind called the meeting to order.

Senator Groff moved that being a majority present, we hear the report of the Sub-Committee headed by Senator Bovey. Senator Smith seconded the motion carried.

Senator Bovey requested that Senator Morrow give the Sub-Committee report. Senator Morrow stated that Representative Cerovski had contacted him regarding Substitute House Bill No. 123 and related to him that this bill has a lot of merits and felt it should be brought out on the floor. There were several amendments discussed which would improve the bill.

Senator Groff moved that the bill be amended as set forth in the attached Committee Report. Senator Bovey seconded the motion-carried.

Senator Bovey moved the meeting adjourn. Seconded by Senator McKenna. Carried. The Senate Committee on Banks and Banking adjourned at 2:00 P. M.

Chairman

contrary, any buyer may prepay in full, at any time before maturity, the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances beginning one (1) month after prepayment is made, bears to the sum of all the monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than one dollar (\$1.00) no refund need be made.

Refinancing.

Section 10. Refinancing retail installment contract. The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments, or defer payment or payments, or renew or restate the unpaid time balance of such contract, the amount of the installments and the time schedule therefor and may collect for such extension, deferment, renewal or restatement a refinance charge computed as follows: The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed or restated by adding to such unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to section 9 of this act, at the rate of the finance charge specified in section 8 (a) of this act and by reclassifying in the case of motor vehicles by its then year model, for the term of the refinancing agreement, but otherwise subject to the provisions of this act governing computation of the original finance charge. The provisions of this act relating to minimum finance charges under section 8 (b) and an acquisition cost under section 9 shall not apply in calculating refinance charges on the contract extended, deferred, renewed or restated. If all unpaid installments are deferred for not more than two (2) months, the holder may at his election charge and collect for such deferment an amount equal to the difference between (a) the refund required for prepayment in full under section 9 as of the scheduled due date of the first deferred installment, and (b) the refund required for prepayment in full as of one

(1) month prior to said date, times the number of months in which no scheduled payment is made.

Section 11. Penalties. (a) Any person who shall knowingly violate any provision of this act or engage in the business of a sales finance company in this state without a license therefor as provided in this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months or both. Penalties.

(b) Any person violating sections 7, 8, 9 or 10 of this act, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance charge, delinquency or collection charge on the contract. Recovery denied.

Section 12. Waiver. Any waiver of the provisions of this act shall be unenforceable and void. Waiver void.

Section 13. Severability and constitutionality. If any provisions of this act or the application thereof to any person or circumstance is held unconstitutional, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision. Severability and constitutionality.

Approved March 18, 1959.

CHAPTER 283

An Act Relating to Loans and Interest and Other Charges and Expenses on Loans; to Define "Consumer Type Loan Business" and Certain Other Terms; to Regulate and License the Business of Making Consumer Type Loans in the Amount of One Thousand Dollars (\$1,000) or Less; to Create the Office of Consumer Loan Commissioner, and to Provide for the Appointment and Compensation of a Consumer Loan Commissioner and to Prescribe the Powers, Duties, Authority and Jurisdiction of Such Commissioner; to Authorize the Adoption and Promulgation of Rules and Regulations; to

Make Certain Acts Unlawful and to Provide Penalties and Forfeitures for Violations of This Act; to Exempt Certain Businesses from the Provisions of This Act; to Prescribe Certain License and Other Fees; to Create a "Consumer Loan Administration Fund" to be Used to Administer and Enforce the Provisions of This Act; to Provide for the Issuance, Refusal, Suspension and Revocation of Licenses; to Provide for the Refund of Certain Precomputed Charges Where a Loan is Paid Prior to Maturity; to Authorize and Regulate the Issuance of Certain Insurance in Connection With Consumer Type Loans in the Amount of One Thousand Dollars (\$1,000) and Less; to Authorize Investigations and Examinations by the Commissioner and to Provide for Examination Fees; to Require Licensees to Keep Certain Records and to Make Certain Reports; to Regulate Wage Assignment; to Provide for Appeals from Any Action or Order of the Commissioner; and Repealing All Acts and Parts of Acts in Conflict Herewith.

Be it enacted by the Legislative Assembly of the State of Montana:

Title.

Section 1. **Act, how cited.** This act may be cited as the Montana consumer loan act.

Definitions.

Section 2. **Definitions.** Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

"Person."

(a) "Person" shall mean individuals, partnerships, associations, corporations and any and all legal entities in the loaning business.

"License."

(b) "License" shall mean the license provided for by this act.

"Licensee."

(c) "Licensee" shall mean the person holding any such license.

"Commissioner."

(d) "Commissioner" shall mean the consumer loan commissioner.

"Consumer type loan business."

(e) "Consumer type loan business" shall mean the business of making loans of one thousand dollars (\$1,

000) or less generally repayable in substantially equal installments.

Section 3. **Office of consumer loan commissioner, employees, appointment, compensation; commissioner; powers and duties; adoption of rules and regulations by commissioners;**

Office of consumer loan commissioner.

(a) There is hereby created the office of consumer loan commissioner, who shall be the bank examiner of the State of Montana. He is hereby authorized to appoint, employ, remove and prescribe the duties and fix the compensation of such employees as are necessary to properly discharge the duties of his office.

State bank examiner is commissioner.

(b) All powers and duties of regulation and supervision conferred by this act are vested in the commissioner. The commissioner shall adopt and promulgate such rules and regulations as shall be necessary to carry out the intent and purposes of this act. All rules and regulations of general application shall be filed in the commissioner's office and be open to the public. A copy of every such rule or regulation shall be mailed to each licensee, postage prepaid, at least fifteen (15) days in advance of its effective date: provided, however, the failure of a licensee to receive a copy of such rules or regulations shall not exempt him from the duty of compliance with such rules and regulations lawfully promulgated hereunder.

Powers and duties to regulate.

Copies to licensees.

(c) All valid rules and regulations adopted under the provisions of this act shall be binding upon all licensees and enforceable by the commissioner through the power of suspension or revocation of licenses.

Enforcement.

Section 4. (a) **Scope; prohibiting engaging in the business of making loans of one thousand dollars (\$1,000) or less, except after having obtained a license; exemptions.** On or after July 1, 1959, no person shall engage in the business of making loans or advances of money on credit in amounts of one thousand dollars (\$1,000) or less and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance, any charges whether for interest, compensation, consideration, or expense which in the aggregate are greater than ten per cent (10%) per annum, except as

Scope—loans of \$1,000 or less.

provided in and authorized by this act. A person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, Morris Plan companies, or a person engaged in business as a licensed pawnbroker, or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this act, nor shall any of the provisions of this act, relating to licensees, apply to any such exempted person who is not licensed hereunder.

Evasions.

(b) Evasions. The provisions of subsection (a) shall apply to any person who seeks to evade its applications by any device, subterfuge or pretense whatsoever.

Invalidity—
penalty.

(c) Invalidity; penalty. Any contract of loan in the making or collection of which any act shall have been done which violates subsection (a) of this section shall be void and the lender shall have no right to collect, receive or retain any principal, interest, or charges whatsoever.

Loans limited
to \$1,000 or less.

Section 5. No licensee under the provisions of this act shall lend money in a total sum greater than one thousand dollars (\$1,000.00) to any borrower.

Section 6. **License, when required; display; nontransferable; removal; license year, fees; consumer loan administration fund; use.**

Display of
license.

(a) On and after July 1, 1959, each place of business operated under this act shall have and properly displayed therein, a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this act as to each license. Application for a license shall be on a form prescribed and furnished by the commissioner. A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the commissioner.

Fees.

(b) Submitted with each application shall be fifty dollars (\$50) as an investigation fee and one hundred twenty-five dollars (\$125) as a license fee, which license fee shall be returned to the applicant if the application is denied. The license year shall be the calendar year

and the license fee for any period less than six (6) months shall be sixty-two dollars fifty cents (\$62.50). Each license shall remain in force until surrendered, suspended or revoked.

(c) All moneys collected under the authority of this act shall be paid into the state treasury by the commissioner.

Moneys paid
into state
treasury.

Section 7. **Issuance or denial of license, when; mailing of denial order and findings.** (a) Within thirty (30) days after an application for license is filed with the commissioner, together with the required fees, the commissioner shall issue the license if the character and general fitness of the applicant is such as to warrant belief that the business will be operated lawfully and fairly within the provisions of this act, or enter an order denying same, if he shall find to the contrary: Provided, however, that any person engaged in the consumer type loan business on December 31, 1958, shall receive a license upon filing the required application and fees within thirty (30) days after the effective date of this act.

Issuance or
denial of license
—when.

(b) A copy of the order granting or denying a license, together with a summary of the findings thereon, shall be filed in the office of the commissioner and shall be public record. A copy of the order denying a license, together with a summary of the findings thereon, shall be mailed postage prepaid, to the applicant at the address stated in the application.

Public record.

Section 8. **Conduct of other business in same office.** A licensee may conduct the business of making loans under this act within any office, room or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, unless the commissioner shall find, after a hearing, that the other business is of such nature that such conduct tends to conceal evasion of this act or of the rules and regulations made hereunder and shall order such licensee in writing to desist from such conduct.

Conduct of
other business.

Section 9. **License renewal fee; failure to pay; effect; license; when in force.** Every licensee shall, on or before the first day of December, pay to the commissioner the

Renewal fee.

sum of one hundred twenty-five dollars (\$125.00) for each license held as a licensee fee for the succeeding calendar year. Failure to pay such license fee within the time prescribed shall automatically revoke such license.

Maximum rate
of charge.

Section 10. (a) **Maximum rate of charge.** Every licensee hereunder may contract for and receive on any loan of money not exceeding one thousand dollars (\$1,000) in amount, charges not in excess of twenty dollars (\$20) per year one hundred dollars (\$100) on that part of the loan not exceeding three hundred dollars (\$300); sixteen dollars (\$16) per year per one hundred dollars (\$100) on that part of the loan exceeding three hundred dollars (\$300) but not exceeding five hundred dollars (\$500), and twelve dollars (\$12) per year per one hundred dollars (\$100) on that part of the loan in excess of five hundred dollars (\$500) but not exceeding one thousand dollars (\$1,000) when the loan is made for a period of one year, and proportionately at these rates for a greater or lesser amount within said limits or for a greater or lesser period of time. Said charges shall be added to the principal of the loan and shall not be deducted or deducted therefrom nor paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(b) On loans of ninety dollars (\$90) or less a licensee may charge, in lieu of charges specified in (a) of this section, not in excess of one dollar (\$1) for each five dollars (\$5) of cash or credit advanced to the borrower, up to the amount of ninety dollars (\$90); and a period of at least fifteen (15) days must be allowed for the repayment of each five dollars (\$5) cash or credit advanced, such charges cannot be assessed by any subterfuge or device on any loan over ninety dollars (\$90) or on any balance of ninety dollars (\$90) or less, when the original loan was greater than ninety dollars (\$90).

Refund
computation.

(c) **Refund.** When any loan contract is paid in full by cash, a new loan, renewal or otherwise, one month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as deter-

mined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: The amount of the refund or credit shall be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(d) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be five per cent (5%) of the amount past due and said amount may be charged once and no more.

Past due
charges.

(e) **Recording fees.** The licensee may collect from the borrower the actual fees paid a public official, or agency of the state, for filing, recording or releasing any instrument securing the loan.

Recording fees.

(f) No further charges, no splitting contracts; certain contracts void. No further or other charges shall be directly or indirectly contracted for or received by any licensee except those specifically authorized by this act. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this act. All balances due to a licensee from any person, as a borrower, or as an endorser, guarantor or surety for any borrower or otherwise, or due from any husband or wife, jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges. If any amount in excess of the charges permitted by this act is charged, contracted for, or received, except as the result of an accidental and bona fide error of computation, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, charges or recompense whatsoever.

Any other
charges void.

Section 11. **Installment payment — Contract period.** No licensee shall enter into any contract of loan of three hundred dollars (\$300) or less, exclusive of charges, under this act which the borrower agrees to make any

Installment
payment—
contract period.

scheduled repayment of principal more than twenty-one (21) calendar months from the date of making such contract, nor any contract or loan for more than three hundred dollars (\$300) exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than twenty-five (25) calendar months from the date of making. Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for shall be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five (45) days of the date of the loan and the charges for the number of days in excess of thirty (30) from the date of making may be added to the scheduled amount of said installment.

Copy to
borrower—
provisions to be
included in
contract.

Section 12. (a) **Borrower to receive copy of contract; or statement of contents.** At the time the loan is made, there will be delivered to the borrower, or if there be two (2) or more borrowers, to one (1) of them a copy of the loan contract, or a written statement in the English language showing in clear and distinct terms:

- (1) The name and address of the lender and of one of the borrowers or a maker of the loan;
- (2) The date of the loan contract;
- (3) The schedule of installments or description thereof;
- (4) The principal amount of the loan excluding charges;
- (5) The rate or amount of charges as the contract may provide;
- (6) The amount collected or paid out for each kind of insurance, if any;
- (7) The amount collected or paid out for filing and other fees as allowed in section 10 (c) hereof;
- (8) The collateral or security for the loan including

all other accommodation or other joint makers (co-makers);

(9) That the borrower may prepay the loan in whole or in part at any time during a licensee's regular business hours, and in case the charges have been added to the principal of the loan that such charges are subject to the refund requirements of section 10 (c) if such loan is prepaid in full.

(b) **Receipts; return of note.** Every licensee shall:

(1) Give to the borrower a plain and complete receipt in a form approved by the commissioner for every payment made on account of any loan at the time such payment is made.

(2) Endorse indelibly on a loan ledger or card which shall be kept by the licensee, the amount and date of each payment made by the borrower of the loan.

(3) Upon repayment of the loan in full, the licensee shall mark indelibly every obligation and security signed by the borrower with the word "Paid" or "Canceled" and release any mortgage, restore any pledge, and cancel and return to the borrower any note and any assignment given to the licensee, within ten (10) days after such repayment. Such canceled notes and canceled assignments shall be mailed to the borrower at his last known address unless returned to the borrower in person.

Release on
full payment.

Section 13. **Confessions of judgment; incomplete instruments forbidden.** No licensee shall (1) take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor (2) take any note or promise to pay that does not disclose the amount of the loan, a schedule of payments or a description thereof, and the agreed charges; and in which blanks are left to be filled in after execution, however, such details need not appear on a certificate of title to a motor vehicle, a policy or certificate of insurance, a chattel mortgage or deed of trust covering future advances according to the law of the district or state where the property is located, or customary powers in connection with bonds or stocks which may be pledged

Confessions of
judgment—
incomplete
instruments
forbidden.

as collateral; nor (3) take any instrument in which blanks are left to be filled in after the loan is made.

Insurance
policies.

Section 14. **Insurance written with loans; types and limitation thereon; delivery of insurance policy.** (a) No insurance of any kind shall be written by a licensee, or employee, affiliate or associate of the licensee in connection with any loan where the principal amount thereof is three hundred dollars (\$300) or less, and such amount of three hundred dollars (\$300) shall not include any charge for interest, insurance or any other identifiable charge.

Insurance
requirements.

(b) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

Property
insurance.

(c) Property insurance. When the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure tangible personal property offered as security against any substantial risk of loss, damage or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

Existing
insurance.

A licensee shall not require insurance under this subsection until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

Power to
investigate.

Section 15. **Investigations, when; who may be investigated.** The commissioner or his duly authorized representatives may at any time investigate any transaction

with borrowers and may examine the books, accounts and records in this state to discover violations of this act by (1) any licensee, (2) any person who advertises for, solicits or holds himself as willing to make loans in amounts of one thousand dollars (\$1,000) or less, or (3) any person whom the commissioner has reason to believe is violating or is about to violate the provisions of this act.

Annual
examinations.

Section 16. **Annual examinations; cost of examinations; limitations.** The commissioner shall make an annual examination of the books, accounts and records of every licensee insofar as they relate to transactions with borrowers under this act and may make such additional examinations as the commissioner deems necessary. The expenses of the commissioner incurred in the examination of the books and records of the licensees, shall be charged at the rate of sixty dollars (\$60) per man days required to examine the books and records of the respective licensees. Each licensee shall be billed by the commissioner for the amount so charged to such licensee. If said charge is not paid within thirty (30) days after the mailing of such bill, the license of said licensee may be suspended or revoked.

Fee.

Enforcement.

Section 17. **Records; time kept.** Each licensee shall keep in each licensed office such books, accounts and records as the commissioner shall require and as are necessary to enable the commissioner to determine whether the licensee is complying with this act and with the rules and regulations promulgated thereunder. The licensee shall preserve such records for at least two (2) years after making the final entry on any loan recorded thereon.

Records
required.

Section 18. **Annual report; contents; verified; publication.** Each licensee shall annually on or before the 15th day of April, file an annual report for the preceding calendar year with the commissioner. Such report shall give information with respect to the financial condition of such licensee and shall include: The name and address of the licensee; balance sheets at the beginning and end of the calendar year; a statement of income and expenses; a reconciliation of surplus or net earnings with the balance sheets; a schedule of assets used in the con-

Annual report
of licensee.

sumer loan business; an analysis of charges, size of loans made and types of security on loans; an analysis of suits and foreclosures; and such other relevant information as the commissioner may reasonably require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state. Such report shall be made under oath and be in form prescribed by the commissioner, who shall make and publish annually an analysis and recapitulation of such reports.

False
advertising
forbidden.

Section 19. **Advertising; limitations.** No person shall advertise, display, distribute, broadcast, or televise or permit to be displayed, advertised, distributed, broadcasted or televised, in any manner whatsoever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions of loans.

Assignments
of wages.

Section 20. **Wage assignments; limitations.** The payment in money, credit, goods or things in action, as consideration for any sale or assignment of, or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall for the purpose of regulation under this act, be deemed a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid, shall, for the purposes of regulation under this act, be deemed interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transactions shall be governed by and be subject to the provisions of this act.

Limitation—
requirements
of assignment.

Any assignment or other transfer to a licensee or for the benefit of a licensee, of salary, wages, commissions or other compensation for services, must be limited to not exceeding ten per cent (10%) of such salary, wages, commissions or other compensation owing at the time of the notice to the debtor's employer, hereinafter provided, and thereafter to become owing. Provided, however, no such assignment or order shall be valid unless it is in writing, signed in person by the borrower, or if the borrower is married unless it is signed in person by both husband and wife, provided that written assent of a spouse shall not be required when husband and wife have been and are living separate and apart when such as-

signment or order is made. Such notice shall be given only if the debtor defaults in payment of the whole or some part of the loan for which such assignment or transfer is security. Such notice must be served on the employer or a managing agent of such employer, must be verified by the oath of the licensee or his agent and must include:

(a) A correct copy of the assignment.

(b) A statement of the amount of such loan and the amount due and unpaid thereon.

(c) A copy of this section. The acceptance and honoring of any assignment shall be at the option of the employer.

Section 21. **Surrender of license; surrender shall not affect liability for acts.** Any licensee may surrender any license by delivering it to the commissioner with written notice thereon but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

Surrender of
license.

Section 22. **Pre-existing lawful contract not affected, when.** No revocation, surrender or expiration of any license shall impair or affect the obligation, of any pre-existing lawful contract.

Existing
contracts not
impaired.

Section 23. **Revocation and suspension of license, when.** The commissioner, upon ten (10) days written notice to the licensee and statement of the grounds therefor and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend, but not for more than thirty (30) days, or revoke any license issued hereunder if he finds the licensee has knowingly violated any provision of this act. Whenever the commissioner shall enter an order revoking or suspending a license, he shall mail a copy of his order by registered mail to the licensee at the address for which the license was issued.

Procedure for
revocation or
suspension of
license.

Section 24. **Reinstatement, when.** The commissioner may reinstate any suspended or revoked license if no fact or condition then exists which clearly would have justified the commissioner in refusing originally to issue such license. In any case where the license has been revoked

Reinstatement.

for cause no application shall be made for issuance of a new license or the reinstatement of a revoked license for a period of six (6) months from the date of revocation.

Appeals.

Section 25. **Appeals, procedure.** Any person, licensee, or applicant, considering himself aggrieved by an order of the commissioner, may within thirty (30) days from the entry of the order complained of, take an appeal to the district court of the county in which the licensed premises affected by such order or the premises sought to be licensed are located, by filing a notice of appeal with the clerk of the district court of the proper county.

Appeals may be taken from the district to the supreme court by the party appealing or by the commissioner as in civil cases except that the commissioner shall not be required to give a bond on appeal.

Powers of
commissioner to
examine
premises and
witnesses.

Section 26. **Access to records — Witnesses.** For the purpose of this section the commissioner or his duly authorized representatives shall have and be given free access to the offices and places of business, files, safes, and vaults, of all such persons, and shall have authority to require the attendance of any person and to examine him under oath relative to such loans or such business or to the subject matter of any examination, investigation or hearing and shall have authority to require the production of books, accounts, papers and records. In the event of disobedience to any subpoena or other process issued by the commissioner or failure to produce any books, accounts, papers and records, the commissioner may invoke the aid of any district court of this state in requiring the evidence and testimony of witnesses and the production of books, accounts, papers and records.

Subpoena.

Powers of
commissioner to
issue cease and
desist orders.

Section 27. **Cease and desist orders — Injunctions — Receivers.** Whenever the commissioner has reasonable cause to believe that any person is violating or is threatening to violate any provision of this act, the commissioner, may, in addition to all actions provided for in this act and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation; and an action may be brought on the relation of the attorney general and the commissioner to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In

Injunction.

any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this act through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by court.

Jurisdiction of
court to appoint
receiver.

Section 28. **Penalties.** (a) Any person who shall contract for, or receive interest or charges on any bond, bill, promissory note or other instrument of writing, at a rate exceeding the maximum amount authorized by this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or both.

Penalty for
usury.

(b) Any person, who by any device, subterfuge or pretense whatsoever, shall engage in any transaction permitted only to licensees, under the provisions of the act, without first having obtained a license as herein required shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or both.

Penalty for
failure to have
license.

Section 29. **Constitutionality.** If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional clause, paragraph, subsection or section.

Savings clause.

Section 30. All acts and parts of acts in conflict herewith are hereby repealed.

Repealing clause.

Approved March 18, 1959.